UNITED STATES DISTRICT COURT

DISTRICT OF MAINE

LUCIEN P. LEJA,	***)***	
	)	
Plaintiff	***)***	
	)	
v.	***)***	***Civil No. 96-370-P-C***
	)	
WILLIAM R. HOLMES, et al.,	***)***	
	)	
Defendants	***)***	

RECOMMENDED DECISION ON CROSS MOTIONS FOR SUMMARY JUDGMENT

Now before the court for decision are cross motions for summary judgment filed by the *pro se* plaintiff (Docket No. 74)[1] and the remaining defendants[2] (Docket No. 88), who are Cumberland County Sheriff Wesley Ridlon and three subordinate employees of the sheriff's department (hereinafter referred to as "the defendants"). The plaintiff asserts claims under 42 U.S.C. § 1983 and Maine law in connection with the his arrest in October 1994 and subsequent incarceration at the Cumberland County Jail.[3] I recommend that the plaintiff's motion be denied and that the defendants'

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[1] This motion, originally stricken as untimely, was restored to the docket on November 3, 1997. *See* Report of Final Pretrial Conference and Order (Docket No. 87) at 2.

[2] As to the other originally named defendants, the court has previously granted summary judgment in favor of Carolyn Helwig and Penny Whitney (Docket No. 60), and has dismissed the claims against Cong Van Nguyen with prejudice (Docket No. 86).

[3] The complaint (Docket No. 1c), filed in state court and subsequently removed here by the original defendants, asserts claims of unlawful arrest (Count I), assault (Count II), criminal restraint (Count III) and malicious prosecution (Count V) against defendants William R. Holmes and Donald Foss. The complaint also asserts claims of conspiracy (Count VI) and deprivation of constitutional rights (Count VII) against all defendants. The latter claim obviously implicates 42 U.S.C. § 1983 and analogous provisions of Maine law. Other allegations in the complaint relate to defendants who have already obtained favorable judgments or who have never appeared. A "Supplemental Pleading"

(continued...)

motion be granted.

I. Summary Judgment Standards

Summary judgment is appropriate only if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). "In this regard, 'material' means that a contested fact has the potential to change the outcome of the suit under the governing law if the dispute is resolved favorably to the nonmovant. By like token, 'genuine' means that 'the evidence about the fact is such that a reasonable jury could resolve the point in favor of the nonmoving party . . . .'" *McCarthy v. Northwest Airlines, Inc.*, 56 F.3d 313, 315 (1st Cir. 1995) (citations omitted). The party moving for summary judgment must demonstrate an absence of evidence to support the nonmoving party's case. *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986). In determining whether this burden is met, the court must view the record in the light most favorable to the nonmoving party and "give the party the benefit of all reasonable inferences to be drawn in its favor." *Ortega-Rosario v. Alvarado-Ortiz*, 917 F.2d 71, 73 (1st Cir. 1990). Once the moving party has made a preliminary showing that no genuine issue of material fact exists, "the nonmovant must contradict the showing by pointing to

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[3](...continued)
(Docket No. 29) names Ridlon as a defendant and, liberally construed, alleges supervisory liability for the constitutional torts alleged in the original complaint. Without objection from the plaintiff, the court has previously treated the claim against Ridlon as one invoking supervisory liability. *See* Recommended Decision on Motion for Summary Judgment, etc. ("Recommended Decision") (Docket No. 55) at 14; Order Affirming the Recommended Decision of the Magistrate Judge (Docket No. 60) at 1 (noting lack of objections to Recommended Decision). Finally, an amendment to the complaint (Docket No. 62) asserts that defendant Patrick McKinney violated the plaintiff's due process rights. This claim also implicates section 1983 and analogous state law.

specific facts demonstrating that there is, indeed, a trialworthy issue." *National Amusements, Inc. v. Town of Dedham*, 43 F.3d 731, 735 (1st Cir.) (citing *Celotex*, 477 U.S. at 324), *cert. denied*, 132 L. Ed. 2d 255 (1995); Fed. R. Civ. P. 56(e); Local R. 19(b)(2). "This is especially true in respect to claims or issues on which the nonmovant bears the burden of proof." *International Assn. of Machinists & Aerospace Workers v. Winship Green Nursing Ctr.*, 103 F.3d 196, 200 (1st Cir. 1996) (citations omitted).

To aid the court in evaluating summary judgment motions against these standards, the Local Rules of the court require the parties to such a motion to support their respective positions as to the existence or non-existence of genuine factual issues by filing "a separate, short and concise statement of material facts, supported by appropriate record citations, as to which the moving party contends there is no genuine issue to be tried." Loc. R. 56. The moving party must submit its factual statement with its motion, the opposing party with the papers opposing the motion. *Id.* The parties are bound by these factual statements and may not challenge the court's summary judgment decision based on facts not properly presented therein. *Pew v. Scopino*, 161 F.R.D. 1, 1 (D.Me. 1995). The plaintiff, who as a *pro se* litigant is not thereby excused from compliance with the rules applicable to summary judgment proceedings, *see Posasdas de Puerto Rico, Inc. v. Radin*, 856 F.2d 399, 401 (1st Cir. 1988), has been previously placed on explicit notice that non-compliance with Local Rule 56 can have outcome-determinative significance, *see* Recommended Decision at 3-4.

The Local Rule 56 factual statement filed by the plaintiff in support of his motion (Docket No. 75)[4] is devoid in all meaningful respects of citations to evidence in the summary judgment

[4] The plaintiff filed an identical document, bearing only a different date, approximately a month later. *See* Docket No. 78.

record, a deficiency noted by the defendants in their objection to the motion.[5] Apparently in an effort to address the point made by the defendants, the plaintiff thereafter submitted a second Local Rule 56 factual statement with his reply memorandum. *See* Plaintiff's Statement of Undisputed Countervaling [sic] Material Facts (Docket No. 96). To regard such a practice as complying with Local Rule 56 would be, in essence, to permit a moving party to delay providing the factual support for a summary judgment motion until after the non-moving party or parties have used up their opportunity to marshal factual data in opposition to the motion. This is obviously at total variance with the orderly and logical procedure for summary judgment practice ordained by Local Rule 56 and Fed. R. Civ. P. 56. For this reason, the plaintiff's motion for summary judgment must be denied.

The plaintiff has submitted no Local Rule 56 factual statement whatsoever in opposition to the defendants' motion. The plaintiff has thereby waived his right to controvert the factual assertions made by the defendants as the moving party, and the court must simply accept as true all material facts that are cited in the defendants' Local Rule 56 statement that are supported by appropriate record citations. *See McDermott v. Lehman*, 594 F.Supp. 1315, 1321 (D.Me. 1984).

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[5] The defendants filed their opposition to the plaintiff's summary judgment motion on November 20, 1997 (Docket No. 92). The plaintiff, in turn, objected to the opposition as untimely. *See* Plaintiff's Objections to Defense November 20, 1997 Filing (Docket No. 93). To the contrary, the opposition was filed on a timely basis. The November 13, 1997 deadline cited by the plaintiff refers to the filing of the defendants' summary judgment motion, not their opposition to the plaintiff's motion. *See* Report of Final Pretrial Conference and Order (Docket No. 87) at 2. Therefore, treating the plaintiff's contentions regarding timeliness as a motion to strike the pleading in question, the motion is denied. The plaintiff also asks in his objection to the defendants' November 20, 1997 filing that the defendants' objection to the court's final pretrial order be denied as untimely and that counsel for the defendants be found in contempt. The former request is denied as moot, *see* Docket No. 91 (endorsement) (continuing case to trial list that follows final ruling on summary judgment motion and for determination of trial deadlines accordingly), and the latter, deriving as it does from the untimeliness objection, is also moot.

II. The Defendants' Motion

a. Factual Context

In light of the foregoing, the summary judgment record developed in connection with the defendants' motion, viewed in the requisite plaintiff-favorable light, reveals the following:

Defendant Ridlon is the sheriff of Cumberland County, a post he assumed in 1991 and which gives him responsibility for overseeing and administering the Cumberland County Sheriff's Department. Response to Interrogatories and Request for Production Directed to Sheriff Wesley Ridlon, etc. ("Ridlon Interrog. Resp."), appended to Statement of Material Facts in Support of Summary Judgment by the Cumberland County Defendants ("Defendants' SMF") (Docket No. 89), at ¶¶ 2-3. As sheriff, Ridlon does not typically become involved in the day-to-day operation of the department's corrections and patrol divisions but has delegated those duties to the jail administrator and the major in charge of patrol, respectively. *Id*. at ¶ 8. These two officials report to the department's chief deputy rather than to Ridlon directly. *Id*. Defendant William R. Holmes is a detective with the department and had been so employed since 1980. Supplemental Response to Interrogatories and Request for Production Directed to Defendant Detective William Holmes, etc. ("Holmes Interrog. Resp."), appended to Defendants' SMF, at ¶ 30. Although his primary responsibilities involve investigating felonies, Holmes also investigates misdemeanors periodically. *Id*. Defendant Donald Foss has been a patrol deputy with the department since 1992. Response to Interrogatories and Request for Production Directed to Defendant Deputy Donald Foss, etc. ("Foss Interrog. Resp."), appended to Defendants' SMF, at ¶ 30. Defendant Patrick McKinney has been employed as a corrections officer with the department since 1989; at the times relevant to this

litigation he was assigned as a booking officer to the intake area of the Cumberland County Jail, with responsibility for processing newly arrested detainees. Response to Interrogatories and Request for Production Directed to Deputy Patrick McKinney, etc. ("McKinney Interrog. Resp."), appended to Defendants' SMF, at ¶ 3.

On October 27, 1994 at approximately 10:00 a.m. Holmes received a telephone call from attorney Richard Thompson. Holmes Interrog. Resp. at ¶ 22. Thompson indicated that his client, Kirsten Smith, was being stalked by the plaintiff. *Id.* Holmes met that day with Thompson and Smith, concluding as a result of the meeting that Smith's allegations of stalking were credible. *Id.* Smith had stated to Holmes that the stalking in question occurred at times when court-imposed protection from harassment orders were in effect against the plaintiff. *Id.* Later on October 27, Holmes confirmed that there existed what he believed to be a valid and outstanding arrest warrant against the defendant, bearing docket number BR-93-00646 and concerning a failure to appear at the Maine District Court in Bridgton on June 23, 1993. *Id.* at ¶¶ 4, 6. To verify the existence of the warrant, Holmes followed his standard procedure, which involved giving the suspect's name and date of birth to the department's dispatcher, who would then check for warrants in a computer database and inform Holmes of the results of the search. *Id.* at ¶ 2. Holmes did not consider it unusual that the warrant in question was a year-and-a-half old, and nothing else suggested to Holmes that the warrant was defective in any respect. *Id.* at ¶ 3. Foss was not involved in the warrant verification process. Foss Interrog. Resp. at ¶ 2.

Holmes and Foss gained entrance to the Portland apartment building where the plaintiff lived by entering as someone else was leaving the building. Holmes Interrog. Resp. at ¶ 16; Foss Interrog. Resp. at ¶ 16. The two deputies thereafter walked towards the elevator and encountered the plaintiff.

Foss Interrog. Resp. at ¶ 18. They informed him there was an outstanding warrant for his arrest. *Id*. Neither deputy recalls showing the warrant to the plaintiff, but neither had been trained that doing so was a requirement in connection with such an arrest. Holmes Interrog. Resp. at ¶ 11; Foss Interrog. Resp. at ¶ 11. The plaintiff was taken to the Cumberland County Jail and interviewed there by Holmes, Foss and Detective Sergeant James Langella. Holmes Interrog Resp. at ¶ 1; Foss Interrog. Resp. at ¶ 1. The plaintiff received the customary Miranda warnings, acknowledged that he understood his Miranda rights, agreed to answer questions and signed a card indicating his willingness to speak with the police. Holmes Interrog. Resp. at ¶ 1; Foss Interrog. Resp. at ¶ 1. This occurred at approximately 5:27 p.m. Holmes Interrog. Resp. at ¶ 1; Foss Interrog. Resp. at ¶ 1. During his interview at the jail, the plaintiff admitted to having written letters to Smith in October and November of 1993, which Holmes and Foss concluded was a violation of a court-imposed protection from harassment order Smith had obtained against the plaintiff. Holmes Interrog. Resp. at ¶ 13; Foss Interrog. Resp. at ¶ 13.

At approximately 6:14 p.m. the plaintiff was brought before McKinney for booking. McKinney Interrog. Resp. at ¶ 4. He was given a pat-down search for contraband at that time. *Id.* In accordance with the jail's standard operating procedures, the jail's intake personnel obtained a photocopy of the warrant originally issued by the Bridgton court. *Id*. at ¶ 29. McKinney also conducted a computer search to determine if the plaintiff had been incarcerated there in the past. *Id.* This search confirmed that the plaintiff had been previously arrested for operating a motor vehicle without a license. *Id.* McKinney updated the jail's records to reflect the plaintiff's arrest and a bail commissioner was summoned. *Id.* The bail commissioner set the following bail: $2,500 single surety, or 10 percent case, in connection with a charge of failing to appear; and $5,000 single surety,

or 10 percent cash, in connection with each of two charges of violating a protection-from-harassment order. *Id*. The bail commissioner further required that the plaintiff refrain from any direct or indirect contact with Smith. *Id.* The plaintiff was informed of the bail conditions and given an opportunity to call family and/or friends in order to secure his release. *Id*. Then, the plaintiff went through the jail's classification process, and was classified as a minimum security inmate. *Id*. During the booking process, jail personnel took the following personal effects from the plaintiff: a shirt, a set of keys, a pair of blue pants, a hat and $150 in cash. *Id*. He was required to shower, issued a jail uniform, subjected to a health screening and taken to the jail's 72-hour housing area. *Id*.

Ridlon has no personal knowledge of the investigation conducted by his department prior to the plaintiff's arrest, nor does he have knowledge of who in his department may have checked on the existence of a valid warrant for the arrest of the plaintiff. Ridlon Interrog. Resp. at ¶¶ 9, 21.

b. Section 1983 Immunity

The defendants contend that they are protected from liability on the plaintiff's federal claims by the doctrine of qualified immunity. Under the doctrine, "government officials performing discretionary functions[] generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). The question whether qualified immunity is applicable to the sheriff's deputies who arrested the plaintiff turns not on their subjective intent, but on whether a reasonable officer could have determined their actions to be lawful in light of clearly established law and the information the deputies possessed. *Anderson v. Creighton*, 483 U.S. 635, 641 (1987).

It is undisputed in the summary judgment record that the only involvement of Holmes and Foss consisted of their having arrested the plaintiff on October 27, 1994, as distinct from what transpired after they brought the plaintiff to the jail. The defendants do not contest the basic premise that the Fourth Amendment protected the plaintiff from arrest by Holmes and Foss unless they acted pursuant to a valid warrant. In my opinion, even if the plaintiff could establish his claim that there was no valid arrest warrant,[6] Holmes and Foss are entitled to immunity from the plaintiff's federal claims based on the reasonableness of their belief that such a warrant existed. The summary judgment record establishes that they came to this belief by following the accepted procedure of checking with the departmental dispatcher, who assured them that a warrant for the plaintiff's arrest was outstanding. *Harlow* requires the court to evaluate the conduct in question "in light of the facts actually known to the officer[s]." *Whiting v. Kirk*, 960 F.2d 248, 252 (1st Cir. 1992) (quoting *Floyd v. Farrell*, 765 F.2d 1,6 (1st Cir. 1985)). Thus, in *Whiting*, qualified immunity was applicable to an officer who executed an arrest based on a facially valid though procedurally defective writ. *Whiting*, 960 F.2d at 251-52; *see also Lowrance v. Pflueger*, 878 F.2d 1014, 1020 (7th Cir. 1989) (officers acted with objective reasonableness in making arrest after receiving information via teletype and

[6] The defendants contend that "the validity and proper execution" of the warrant at issue is "established by the law of the case," in light of the court's adoption of my recommended decision granting summary judgment in favor of former defendants Helwig and Whitney. Defendants' SMF at 4 n.1. I disagree. As I explicitly noted in my previous recommended decision, the facts recited therein concerning the arrest warrant were assumed purely for purposes of evaluating the ultimately meritorious contention of Helwig and Whitney that they were entitled to immunity from any liability arising out of the issuance of the warrant. *See* Recommended Decision at 5. I made that determination in the context of the plaintiff's allegation, unsupported in the record developed in contention with the previous summary judgment motion, that Helwig and Whitney conspired with Holmes and Foss to issue a false arrest warrant. *See id.* at 5-6. In the present context, because the outcome turns on the reasonableness of the assumption by Holmes, Foss and McKinney that a valid warrant existed, it is not necessary to consider whether there was actually a valid warrant.

computer that warrant existed); *Capone v. Marinelli*, 868 F.2d 102, 104-06 (3d Cir. 1989) (reasonable reliance on bulletin reporting existence of arrest warrant); *Lauer v. Dahlberg*, 717 F. Supp. 612, 613 (N.D.Ill. 1989) (similar; arresting officer confirmed "active status" of arrest warrant through departmental dispatch center), *aff'd*, 907 F.2d 152 (7th Cir. 1990) (table). As *Whiting* teaches, even a false arrest is not amenable to redress under section 1983 if the officers acted reasonably though mistakenly because "[t]o hold otherwise[] would impose an undue burden on public officials of a threat of liability for the faithful execution of their official duties." *Whiting*, 960 F.2d at 252.

The summary judgment record also establishes the reasonableness of McKinney's belief that he booked the plaintiff pursuant to a valid warrant. It is uncontroverted that he followed the jail's standard booking procedures, which included obtaining a photocopy of the warrant. Again, even assuming the plaintiff is correct in his contention that there was no valid warrant, McKinney acted in the reasonable belief that there was and is therefore immune from section 1983 liability.

The doctrine of qualified immunity also applies in the context of a section 1983 claim that proceeds on a theory of supervisory liability. *See, e.g., Diaz v. Martinez*, 112 F.3d 1, 4-5 (1st Cir. 1997). The relevant question is whether a reasonable police supervisor, charged with the duties borne by the official in question, would have understood that he could be constitutionally liable for failing to identify and take remedial action concerning the subordinates' actions at issue. *Id*. at 4. The defendants' discussion of qualified immunity does not discuss the applicable standard as it relates to supervisory liability, and does not even mention Ridlon by name. Therefore, the defendants have failed to establish that Ridlon is entitled to summary judgment on qualified immunity grounds. *See United States v. Zannino*, 895 F.2d 1, 17 (1st Cir. 1990) ("issues adverted

to in a perfunctory manner, unaccompanied by some effort at developed argumentation, are deemed waived") (citations omitted).

c. Immunity under Maine Law

The defendants also contend that Holmes, Foss and McKinney are immunized from the plaintiff's state-law claims pursuant to the relevant provision of the Maine Tort Claims Act, 14 M.R.S.A. § 8111. To the extent that the plaintiff's constitutional claims arise under state law, the court does not apply the Tort Claims Act but, instead, "employs the federal standard for qualified immunity" because the Maine Civil Rights Act, the state-law analog to section 1983, was patterned after its federal counterpart. *Comfort v. Town of Pittsfield*, 924 F.Supp. 1219, 1236 (D.Me. 1996) (citations omitted). Therefore, as to any constitutional claims arising under state law, Holmes, Foss and McKinney enjoy immunity.

Concerning the other claims, the immunity provision of the Tort Claims Act establishes that employees of government entities are "absolutely immune from personal civil liability" for, *inter alia*, "[p]erforming or failing to perform any discretionary function or duty, whether or not the discretion is abused" and "[a]ny intentional act or omission within the course and scope of employment." 14 M.R.S.A. § 8111(1)(C) and (E). The "intentional act or omission" does not apply when the employees actions were taken "in bad faith." 14 M.R.S.A. § 8111(1)(E). The contours of discretionary function immunity under the Maine Tort Claims Act are different from the qualified immunity applicable to section 1983 claims. *Comfort*, 924 F.Supp. at 1237 n.16. Nevertheless, it is clear that the Tort Claims Act immunizes Holmes, Foss and McKinney from the plaintiff's state-law tort claims. The arrest and booking of the plaintiff were well within the course and scope of

these defendants' employment, and nothing in the record suggests bad faith on their part. I stress, however, that the complaint against McKinney does not appear to raise any claims other than the deprivation of the plaintiff's civil rights, to which the immunity provisions of the Tort Claims Act do not apply.

d. The Underlying Claims

In addition to resisting the suit on immunity grounds, the defendants also contend they are entitled to summary judgment based on the substance of the plaintiff's claims. The entitlement of Holmes, Foss and McKinney to summary judgment on immunity grounds makes it unnecessary for the court to reach the merits of the underlying claims as to these defendants, and accordingly I omit any discussion of the issues as to them.

Finally, the defendants contend that Ridlon is entitled to summary judgment because the record is devoid of evidence that his conduct as a supervisor is affirmatively linked to any wrongs committed by his subordinates that are at issue in this litigation. Without objection from the plaintiff, the court has previously characterized the claim against Ridlon as one alleging supervisory liability arising out of a deliberate indifference to the constitutional rights of citizens with whom his employees come into contact. *See* Recommended Decision at 14. A supervisor may also incur section 1983 liability through "participation in a custom that leads to a violation of constitutional rights." *Diaz*, 112 F.3d at 4 (citation omitted). As already noted, the standards applicable to section 1983 are also dispositive of any analogous claims arising under Maine law.

As the defendants point out, the summary judgment record is devoid of evidence that Ridlon played any role whatsoever in overseeing the events at issue in this lawsuit. Indeed, for all that

appears in this record, Ridlon is essentially a figurehead, having delegated responsibility for the patrol and correctional divisions of his department to divisional heads who report to the chief deputy rather than to the sheriff himself. This falls far short of meeting the plaintiff's burden to establish an "affirmative link . . . between the action or inaction of [the] supervisor and the behavior of [his] subordinates," which "contemplates proof that the supervisor's conduct led inexorably to the constitutional violation." *Seekamp v. Michaud*, 109 F.3d 802, 808 (1st Cir. 1997) (citations omitted). Ridlon is therefore also entitled to summary judgment in his favor.

IV. Conclusion

For the foregoing reasons, I recommend that the plaintiff's motion for summary judgment be **DENIED** and that the defendants' motion for summary judgment be **GRANTED**.

NOTICE

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) for which de novo review by the district court is sought, together with a supporting memorandum, within ten (10) days after being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to de novo review by the district court and to appeal the district court's order.

Dated this ___ day of December, 1997.

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David M. Cohen
United States Magistrate Judge